THE MISSOURI SUPREME COURT

UNITED C.O.D.

Appellant

v.

THE STATE OF MISSOURI
AND
ST. LOUIS CITY AND COUNTY REGIONAL TAXICAB COMMISSION

Respondents

SC85537

Appeal From the Circuit Court of St. Louis City

The 22nd Judicial Circuit Court

Division 3

The Honorable Thomas C. Grady

BRIEF OF APPELLANT

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Jurisdictional Statement

The Missouri Supreme Court has jurisdiction to hear this appeal pursuant to the Missouri Constitution, Article V, §3. This appeal challenges the validity of state statutes §§67.1800 through 67.1822. The Final Order and Judgment was issued in this case by the 22nd Judicial Circuit Court on July 31, 2003. A timely Notice of Appeal was filed on August 4, 2003.

Mo. Statutes §§67.1800 through 67.1822 involve the constitutionality of the Metropolitan Regional Taxicab Commission as a whole and the rules implemented by it to its drivers and the public which violate the 1st, 5th, 6th, 8th, 13th, and 14th Amendments to the U. S. Constitution.

STATEMENT OF FACTS

On June 2, 2003, Appellants, comprised of a collective group of independent taxicab drivers and owners operating within St. Louis metropolitan area, filed a Motion for Temporary Restraining Order against the State of Missouri and the St Louis City and County Regional Taxicab Commission, as well as a Petition For Injunctive Relief. Appellants requested that Respondents be restrained from adopting into law Mo. Statutes §§ 67.1800 to 67.1822. On June 6, 2003, the trial court denied the Motion For Temporary Restraining Order. A Motion For Reconsideration was filed on June 12, 2003 and heard on June 13, 2003. The Temporary Restraining Order was again denied.

Appellants have standing in that there is actual injury that is concrete and individualized, and Appellants are being damaged by the power Mo. Statutes §§ 67.1800 to 67.1822. has granted the St. Louis City and County Regional Taxicab Commission by St. Louis City and St. Louis County, and all approved by the State of Missouri.

Mo. Statutes §§ 67.1800 to 67.1822 are an infringement upon the private sectors' Constitutional rights, Appellant's individual Constitutional rights, as well as, their collective Constitutional Rights as a whole. Appellants will continue to suffer irreparable harm, damage, and injury unless Mo. Statutes §§ 67.1800 to 67.1822 are deemed unconstitutional in violation of Appellant's 1st, 5th, 6th, 8th, and 14th Amendment rights granted to each individual by the U.S. Constitutional, and Missouri comparable Constitutional provisions.

POINTS RELIED ON

I

The trial court erred in finding that the powers granted by the Regional Taxicab Commission as granted by Mo. Statutes §§67.1800 through 67.1822 were reasonable because the Statutes granting such power violate several Constitutional Rights of the Appellants and the public as a whole and in doing so deprive Appellants their natural right to life, liberty and the enjoyment of the gains of their own industry.

1. Cheek v. Prudential Ins. Co. of America, 192 S.W. 387 (Mo. Sup. Ct. 1916).
2. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).
3. Miller v. City of Manchester, 834 S.W.2d 904, (Mo. App. E.D. 1992)
4. Etling, Jr. v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. Sup. Ct. 2003).

II

The trial court erred in not acknowledging that the taxicab industry is a local industry and that the powers granted by Mo. Statutes §§67.1800 through 67.1822 undertook to achieve what was beyond their power because it could not be realized by any exercise of specific power granted by the Constitution.

1. Carter v. Carter Coal Co., 298 U.S. 238, (1936).

2. Murphy v. Carron, 536 S.W.2d 30, 32(**Mo.** banc 1976).

3. SSM Cardinal Glennon Children's Hospital, f/k/a Cardinal Glennon Children's Hospital, et al. v. State of Missouri, et al., 68 S.W.3d 412, (2002).

4. Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.

III

The trial court erred in not addressing Mo. Statutes §§67.1800 through 67.1822, each, as a whole because the Statutes were the birth of the Regional Taxicab Commission and the application of the rules and regulations of the Code of the Commission in that the subject of the Request for Injunctive Relief engulfed all issues of the Statutes and the original Petition for Injunction Relief stipulated all of the aforementioned Statutes.

1. Murphy v. Carron, 536 S.W.2d 30, 32(Mo. banc 1976).

2. Hide Park Housing Partnership, et al. v. Director of Revenue, 850 s.W.2d 82 (Sup. Ct. 1993).

3. Johnson v. Lester and Lesco Enterprises, 71 S.W.3d 240, (Mo. App. E.D. 2002).

IV

The trial court erred in drawing the proper legal conclusions from the facts stipulated because the finding was against the weight of the evidence in that Respondents' members of the Board of the Commission demonstrated that they have a vested interest in the success of the Commission borne by Mo. Statutes §§67.1800 through 67.1822 and the Appellants had been and will continue to be directly and adversely affected by that vested interest.

1. U.S. Preamble to the United States Constitution
2. State ex rel. Dalton v. Holekamp Lumber Co., 331 S.W.2d 171, (Mo. App. 1960).
3. State ex rel. Hadley v. Standard Oil Co., 218 Mo. 1 (1909)
4. Schnapps Shop, Inc. v. H. W. Wright & Co., 377 F. Supp. 570, (D. Md. 1973).

ARGUMENT

I

The trial court erred in finding that the powers granted by the Regional Taxicab Commission as granted by Mo. Statutes §§67.1800 through 67.1822 were reasonable because the Statutes granting such power violate Constitutional Rights of the Appellants and the public as a whole and in doing so deprive Appellants their natural right to life, liberty and the enjoyment of the gains of their own industry.

1. Cheek v. Prudential Ins. Co. of America, 192 S.W. 387 (Mo. Sup. Ct. 1916).
2. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).
3. Miller v. City of Manchester, 834 S.W.2d 904, (Mo. App. E.D. 1992)
4. Etling, Jr. et al., v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. Sup. Ct. 2003)

Statutes are presumed to be constitutional, and the party attacking the constitutionality of a statute "bears an extremely heavy burden." Th[e] Court[s] will not invalidate a statute "unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied" Etling, Jr. et al., v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. Sup. Ct. 2003)(citing Linton v. Missouri Veterinary Med. Bd., 988 S.W.2d 513, 515 (Mo. banc 1999)). The powers granted by the Regional Taxicab Commission as granted by Mo. Statutes §§67.1800 through 67.1822 are unconstitutional and unreasonable because the Statutes granting such power violate several Constitutional Rights of the

Appellants and the public as a whole and in doing so deprive Appellants their fundamental right to life, liberty and the enjoyment of the gains of their own industry. Their industry being that of the taxicab industry.

The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985) (citing *Schweiker* v. *Wilson*, 450 U.S. 221, 230 (1981)). When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, Id. at 440., and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.

The statutes in question do violate the Equal Protection Clause of the Missouri Constitution, MO. CONST. Art. 1 §2, because they infringe upon the fundamental rights of the Appellant as granted by the Constitution. In deciding whether a statute violates the Equal Protection clause, th[e] Courts engage in a two-part analysis. The first step is to determine whether the classification "operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution." If so, the classification is subject to strict scrutiny and this Court must determine whether it is necessary to accomplish a compelling state interest. If not, review is limited to determining whether the classification is rationally related to a legitimate state interest. Id. at 774.

In applying the first test to the case at hand, the statutes in question do operate to the disadvantage of the working class of the taxicab industry and to the public as a whole

in the City of St. Louis and St. Louis County, and they do infringe upon fundamental rights, which are protected and guaranteed to all of us by the Missouri Constitution, as well as the U.S. Constitution. The Fourteen Amendment states,

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Since the inception of these statutes, Appellants have been made to face the reality of living hand to mouth, faced with further undue hardship, and loss of their businesses that they took pride in. Their livelihood is threatened on a daily basis. The Statutes which are subject of this case collectively violate Appellants' Fourteenth Amendment rights and overwhelmingly deprive each of them their livelihood, liberty, property, and equal protection under the law.

The taxicab industry is comprised of the working class people who are not trying to become rich, but rather make an honest living to support themselves and their families, doing what they like to do. Their American Dream is shattered due to their inability to adhere to the strict guidelines infringed upon them by these Statutes (**Tr. Vol. 1, June 5, 2003:** p. 27, lines 1—p. 13; **Tr. Vol. I,, June 13, 2003**, p. 75, lines 20—25; p. 77, line

24—p. 78, line20; p. 87 lines 4—6; p. 94, lines 18—24; p. 110, line 10—p. 111, line 4; p. 135, line3 18—p. 136 line 4; **Tr. Vol. 1I, July 10, 2003,** p. 256**,** line 9—24; p. 258 line 12—259, line 7; p. 263 line 10—20[1]; p. 336, line 11—23; **Tr. July 11, 2003**, p. 13—p. 19, line 19;

Inasmuch as the Appellants have shown that their constitutional rights are in jeopardy, we further believe that the statutes in question are subject to strict scrutiny and this Court must determine whether the statutes are necessary to accomplish a compelling state interest. Appellants do not believe so. Rather the Statutes are self-serving to the Regional Taxicab Commission, which was created out of the very Statutes we are discussing herein as a vessel for personal gain by members of the Board of the Regional Taxicab Commission.

"[A] man has a legal right to labor cannot be questioned. § 4 of the Bill of Rights…provides "that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry." This provision … includes the right to labor, otherwise there would be no fruits of industry for persons to enjoy." Cheek v. Prudential Ins. Co. of America, 192 S.W. 387 (Mo. Sup. Ct. 1916). The state interest should lie with its citizens and the welfare of the State as a whole. The Appellants are trying to make an

[1] In order to Correct the Record on Appeal—Volume II's transcript was mistakenly dated Thursday, July 11, 2003, but should have been dated Thursday, July 10, 2003. P. 263, Line 16, and should be corrected to read as follows: "Cab drivers don't make a lot of money…."

honest living, but the State through its Statutes, which initiated the Regional Taxicab Commission, are imposing regulations and guidelines that are impossible for the taxicab drivers to meet.

Due to the Appellant's inability to meet the criteria for every aspect of the guidelines being imposed by the Regional Taxicab Commission, individual taxicab driver's are becoming unemployed. Many of these individual taxicab drivers are elderly. This is their only livelihood and even though it nets them very little in pay, it gives them spirit, pride, and a sense of belonging to the community. Now, however, they are made to feel useless because these Statutes impose strict monetary fees for licenses for taxicabs, potential fines that are not required in other areas of the State for not adhering to the rules and regulations of the Commission, and an age requirement for vehicles whereby they would have to replace their vehicles after 6 years. (**Tr. July 10, 2003**, **Vol II,** p. 385, line 1, p. 386, line 6, continued testimony of Crawford Miller, p. 387, line 10—p. 389, line 22; **Tr. July 10, 2003**, **Vol III,** p. 405, line 7—16, p. 406, line 8—p. 407, line 12; line 19; p. 451, line 15—p. 454, line 17; p. 464 line 16—466, line 1; **Tr. July 11, 2003**, p. 6—7, line 4, continued testimony of Anthony Oliver, p. 13, line 21—p. 19. The citizens of the City of St. Louis and St. Louis County, State of Missouri are being made to suffer as well, in that they no longer have the right to choose whom they wish to ride with or not to ride with. **Tr. July 10, 2003**, **Vol III,** p. 412, line 2—p. 413, line 13. Many of the passengers that take taxicabs are elderly, and they have had the privilege of calling to request a driver they had known and feel safe with. Many drivers have individuals that they pick up on a regular basis, at scheduled times whereby the

passenger knows their taxicab is coming without have to call and wait. Appellants have built their businesses on repeat clientele and pre-scheduled fares. They know these fares are part of their guaranteed income, but not anymore, as the fares are being made to go through the Commission.

"A party has standing to challenge the validity of an ordinance only if standing is conferred by statute or another applicable ordinance or if the party can demonstrate that he is directly and adversely affected by the ordinance." Miller v. City of Manchester, 834 S.W.2d 904, (Mo.App. 1992). (citing City of Bridgeton v. Ford Motor Cr. Co., 788 S.W.2d 285, 290 (Mo. banc 1990)). Appellants have demonstrated through testimony as well as by affidavit that they are suffering and will continue to suffer, as well as their families. (L.F. Vol. 1, Tab 2, p. 7—126)

The powers that the Statutes gave with the birth of the Regional Taxicab Commission have put good people out of work, taken livelihood and meaning from the lives of elderly, and Appellants will continue to be adversely affected by these Statutes as previously and continuously shown.

II

The trial court erred in not acknowledging that the taxicab industry is a local industry and that the powers granted by Mo. Statutes §§67.1800 through 67.1822 undertook to achieve what was beyond their power because it could not be realized by any exercise of specific power granted by the Constitution.

1. Carter v. Carter Coal Co., 298 U.S. 238, (1936).
2. Murphy v. Carron, 536 S.W.2d 30, 32(**Mo.** banc 1976).
3. SSM Cardinal Glennon Children's Hospital, f/k/a Cardinal Glennon Children's Hospital, et al. v. State of Missouri, et al., 68 S.W.3d 412, (2002).
4. Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.

The laws of a state must treat an individual in the same manner as others in similar conditions and circumstances. The equal protection clause is not intended to provide "equality" among individuals or classes, but only "equal application" of the laws. The result, therefore, of a law is not relevant so long as there is no discrimination in its application. By denying states the ability to discriminate, the equal protection clause of the Constitution is crucial to the protection of civil rights. The Statutes subject to this appeal do not promote equal application of the law to the Appellants compared to individuals that do not drive taxicabs for a living or for that matter, any employment where a vehicle is required for business purposes. In the State of Missouri, to own and operate a vehicle: 1) the vehicle must pass a State inspection for safety, as well as an emissions test, 2) the owner must be current with his/her personal property taxes, and 3)

the owner must maintain verifiable insurance within the minimum state guidelines for insurance of a motor vehicle.

REV. MO. STAT. §§ 67.1800 and 67.1802 establish a regional taxicab district, and a regional taxicab commission. The regional taxicab commission sets out its regulations and requirements in The Metropolitan Taxi Commission Vehicles for Hire Code. (hereinafter referred to as the "Code") (L.F. Vol. 2, §13) The Code repeatedly oversteps its boundaries as it sets out requirements that go beyond its realm of powers and necessity.

The State of Missouri requires that 1) the vehicle must pass a State inspection for safety, as well as an emissions test. Every vehicle, including vehicles for hire, in this great State must pass those tests before they have the privilege of operating on her roadways. However, the Code is placing even more stringent, unnecessary, and financially burdensome requirements upon the vehicles for hire as outlined under the Code's § 304. (L.F. Vol. 2, §13, p. 10). This section states that vehicles for hire must pass an initial inspection for "cleanliness and general operational fitness". This is overly broad in itself and goes beyond the scope of the statute's intention and serves in no way to promote the general safety and well being of the citizens of this State. There has been no definition as to the criteria for "cleanliness" and "general operational fitness." The State of Missouri ensures that every vehicle on her roadway meet "general operational fitness" in its requirements. There is no statute giving description of "cleanliness". Beauty is in the eye of the beholder. What is clean to one, is lived in to others, or comfortable, or what ever adjective they so choose to apply to their individual description

of “cleanliness.” The Code fails to outline the criteria for said inspections, and to establish the necessity and its foundation for being rationally related to a legitimate state interest in enforcing more inspections and the monetary burden that is passed on to the driver/owner of the vehicles for hire relating to this additional inspection.

Fees for these inspections are set out by the Director of the Commission, with the approval of the Commission. However, published fees, and proposed increases in fees have not been outlined. The Commission is in operation by Statute, so in essence, the State of Missouri is mandating the inspections and fees for such inspections being imposed upon the vehicles for hire.

Under the Code’s § 208, every vehicle for hire must be insured and carry minimum motor vehicle liability insurance in the sum of $ 200,000.00 (L.F. Vol. 2, §13, p. 8). The amount of insurance required beginning January 31, 2004, is $100,000.00 combined single limit for any one (1) accident. The amount of insurance coverage required is to increase to $200,000.00 after January 31, 2005. At present the State of Missouri minimum requirement for liability is $10,000.00 for bodily injury, $20,000.00 per accident, $5,000.00 personal property. Herein again, the Code oversteps its boundaries as it sets out requirements that go beyond its realm of powers and necessity. The State of Missouri has secured by Statute the amount of insurance required for the privilege of operating a motor vehicle on her streets. The Statute that enacts the Regional Taxicab Commission does not propose to replace the statute or even amend the statute outlining its minimum insurance requirements for vehicles, but rather, imposes unnecessary and burdensome minimum requirements for the “taxicab industry” which is

again a violation of the Equal Protection Clause of the Constitution. The result of a law is not relevant so long as there is no discrimination in its application. The application of the increased minimum standards is indisputably discriminatory toward the taxicab drivers/owners, and imposes yet another increase in their costs to maintain their income, as previously outlined in Argument I, and violates the Appellant's First Amendment Rights.

Under the Code's § 401, (L.F. Vol. 2, §13, p. 12), a person driving a vehicle for hire must comply with certain requirements which also, violate Appellants 1st Amendment rights, as well as their civil rights in violation of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq. (hereinafter refered to as "Title VII"). The Code under §401(b) states that a person must be able to speak and understand directions, oral and written, in the English language. This section in itself is discriminatory based on national origin. Title VII, §2000e-2 states that it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or *national origin*… By mandating through its Code that taxicab drivers/owners must be able to speak and understand directions, oral and written, in the English language prohibits those of national origin from seeking employment in the taxicab industry. Although, it is obvious that what the Code intended in this provision was to ensure communication between patron and driver, and a certain degree of understanding of the English Language is necessary, but the Code goes beyond

its powers in its mandatory requirement. The driver must have passed the State of Missouri's madatory requirements to even obtain a driver's license; they also must have passed the chaueffer's licencing requirements as well. These tests are administered in English. The provision the Code has instituted goes beyond its scope of necessity for the industry in this case. Further Title VII §2000e-2 (k)(1)(i) states that it is an unlawful employment practice based on disparate impact established under Title VII if the [Appellants] demonstrate that a respondent uses a particular employment practice that causes a disparate impact on the basis of … national origin and that the challenged practice is job related for the position in question and *consistent with business necessity*. (emphasis added). Further this provision of the Code violates the First Amendment rights of those that cannot read the English language, but however, can speak the English Language, regardless of their national origin even if that nationality is American. True enough, and Appellants agree, that an understanding is necessary to some degree, however, that degree to which it is necessary is not outlined in the Code, but rather is vague and overly broad, and renders itself discriminatory. Accommodations for lack of ability to read and write are available in our day and age. The Code leaves no provision for any accommodations of any nature and directly violates Appellants civil rights, as well as Constitutional rights.

Further, the Code places an age limit of the vehicle being used by the taxicab drivers/owners in their industry. The State of Missouri has no limit to the age a vehicle is that would prohibit a person from owning and operating that vehicle so long as it meets the State criteria as previously outlined. Under the Code § 602 (L.F. Vol. 2, §13, p. 19), no

on-call taxicab can be placed into service that is older than 6 model years. A vehicle which is currently in service, shall follow the following criteria:

1. January 31, 2004: On-Call taxicab shall be no older than 11 model years
2. January 31, 2005: On-Call taxicab shall be no older than 10 model years
3. January 31, 2006: On-Call taxicab shall be no older than 9 model years

This provision has unjustly caused irreparable harm to Appellants. The Appellants are comprised in part of elderly drivers on fixed incomes. These individuals own vehicles that will not meet the above standards due to the age of the vehicle, but will meet the State of Missouri requirements for a vehicle. (Tr. Vol. III, July 10, 2003, p. 405, line 5—407 line 14; p. 409, line 21—p. 411, line 12; p. 451, line 15—407 line 9).

The Commission attempts to justify this portion of its adopted code by stating that the statutes at the heart of this appeal authorize these requirements repeatedly. (Tr. Vol. III, July 10, 2003, p. 427, line 24—428 line 13.) This rationale oversteps the Statutes already in place regarding vehicles on the streets of Missouri, and is causing irreparable harm to Appellants as of this writing and continuing on.

As stated in SSM Cardinal Glennon Children's Hospital, f/k/a Cardinal Glennon Children's Hospital, et al. v. State of Missouri, et al., 68 S.W.3d 412, (2002), "Art. III, §§ 21 and 23, of the Missouri constitution places procedural limitations on the legislative process. § 21 provides that "no bill shall be so amended in its passage through either house as to change it original purpose." § 23 provides that "no bill shall contain more than one subject which shall be clearly expressed in its title…." SB 1108 and HB1868, in passage contained more than one subject matter, under the guise of a regional

taxicab commission, and the Regional Taxicab Code with its realm of subjects hidden within it make the provision in its entirety unconstitutional. REV. MO. STAT. 2000 § 1.140 states that if a bill contains more than one subject, the entire bill is unconstitutional unless the Court is convinced beyond a reasonable doubt that on the bill's multiple subjects is its original, controlling purpose, and that the other subject is not. Id. at 417 (Citing Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. Banc 1994)). The Bills that passed the Statutes which are subject to this Appeal established the Regional Taxicab Commission, but the powers granted to the Regional Taxicab Commission are the umbrella that covered the Metropolitan Taxicab Commissions Code which has its controlling purpose, and operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution. The test for determining whether a bill has multiple subjects is not whether the individual provisions of the bill itself relate to each other, but focuses on the subject of the bill as it is expressed in the title of the bill. (internal citation omitted). If the individual provisions "fairly relate" to the subject described in the title of the bill, have a "natural connection" to the subject or are a means to accomplish the law's purpose, then the law would have a single subject and withstands a constitutional challenge. Id. at 416 (citing Fust v. Attorney General, 947 S.W.2d 424 (Mo. banc 1997)). The Regional Taxicab Commission was granted the power to adopt a Code. However, the Code does not encompass a single subject, but rather a realm of constitutionally challenged subjects. "The Court shall review the case upon both the law and the evidence as in suits of an equitable nature." Murphy v. Carron, 536 S.W.2d 30, 32(Mo**.** banc 1976). The evidence

of the aforementioned stands on its own merit. Although, a mere few testified at the trial court level, it would have taken up the Court's time with repeated testimony from each Appellant as to the severe irreparable harm they have suffered, and are continually suffering. The law stands for it is what our whole judicial system is based upon.

The Statutes that are subject to this Appeal grant powers that promote unconstitutional practices and violate Appellants and others' constitutional rights. [A]t the trial court level, the suits were held to be not premature, although the effective date of the act had not yet arrived…. The injury to Appellant was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the Act, the injury would have become irreparable. Carter v. Carter Coal Co. et al., 298 U.S. 238 (1936). The injuries sustained by Appellants and that Appellants will incur are very real, continuing, and irreparable. Prevention of impending injury by unlawful action is a well recognized function of courts of equity." Id.

> [T]he Constitution itself is in every real sense a law -- the lawmakers being the people themselves, in whom under our system all political power and sovereignty primarily resides, and through whom such power and sovereignty primarily speaks. It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible…. That supremacy is absolute; the supremacy of *a statute enacted by Congress is not absolute but conditioned upon its being*

> *made in pursuance of the Constitution.* (emphases added). And a judicial tribunal, clothed by that instrument with complete judicial power, and, therefore, by the very nature of the power, required to ascertain and apply the law to the facts in every case or proceeding properly brought for adjudication, must apply the supreme law and reject the inferior statute whenever the two conflict. In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, *Adkins* v. *Children's Hospital*, 261 U.S. 525, 544; but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry. *Schechter* v. *United States*, 295 U.S. 495, 549-550.

Id. at 297, 298.

III

The trial court erred in not addressing Mo. Statutes §§67.1800 through 67.1822, each, as a whole because the Statutes were the birth of the Regional Taxicab Commission and the application of the rules and regulations of the Code of the Commission in that the subject of the Request for Injunctive Relief engulfed all issues of the Statutes and the original Petition for Injunction Relief stipulated all of the aforementioned Statutes.

1. Murphy v. Carron, 536 S.W.2d 30, 32(Mo. banc 1976).

2. Hide Park Housing Partnership, et al. v. Director of Revenue, 850 S.W.2d 82 (Sup. Ct. 1993).

3. Johnson v. Lester and Lesco Enterprises, 71 S.W.3d 240, (Mo. App. E.D. 2002).

The trial court stated in paragraph 5 of its Findings of Fact, Conclusions of Law and Judgment, (L.F. Vol. III, Tab 19, p. 475) that Plaintiff has failed in its burden to demonstrate that the statutes creating the Regional Taxicab Commission are unconstitutional, and that the contentions of Plaintiff appear to be premised on a belief that neither the State nor any agency or commission created by the General Assembly may regulate persons who use the public streets in the course of their business. This is a misconception by the trial court. Appellants made a showing that the powers granted by the legislation to the Regional Taxicab Commission are unconstitutional in foundation due to those powers granted by the Statutes' infringement upon the individual

constitutional rights of Appellants. Appellants agree with the trial court in that there is a valid and justiciable controversy between the parties over the validity of the rules and regulations promulgated by the Commission. However, the trial court failed in its realization that Appellants are being not being irreparably harmed by those rules and regulations that are the core of the controversy.

On June 2, 2003, Appellants filed its Motion for Temporary Restraining Order. (L.F. Vol. 1, Tab 2). Attached to that Motion are several Affidavits from individual Appellants outlining their issues and stating the irreparable harm that they were going to endure. Appellants realize that a court cannot rule on the abstract, and a showing of immediate harm must be made, however, the harm was very real to each of them at the time through the fear of exactly what has happened to them now. The trial court did not address the issues that were presented to it by the Appellants as a ruling on those issues has not been made. A list of issues that were not addressed by the trial court with specifity are listed on L.F. Vol. 1, Tab 2, p. 7—9, 11, 13, 15, 17, 18, 19, 20, 31, 35, 37, 47, 51, 53, 55, 58, 62, 64, 66, 68, 70, 72, 78, 83, 85, 87, 92, 97, 99,101, 107, 111, 113, and 115. The Memorandum in Support of Motion for Temporary Restraining Order addressed some of those issues at length, but the trial court made no ruling or mention in its Order. The Memorandum in Support of Motion for Temporary Restraining Order, after listing a condensed list of issues, further stated that the list was a condensed list, and is not exhaustive of the immediate modes of irreparable harm and undue hardship that will be placed upon the Plaintiffs. (L.F. Vol. 1, Tab 3, page 128)

The Petition For Injunctive Relief further addressed issues for the trial court's consideration, which were again, not addressed in the Trial Court's ruling. (L.F. Vol. 1, Tabs 3 & 4) These issues are directly related to the Metropolitan Taxicabs Vehicle For Hire Code in that the Code was adopted by the Regional Taxicab Commission under Statute, and therefore the Statutes should have been reviewed more specifically. The Statutes are and were overly broad in their granting of power to the Commission to institute rules and regulations, as those rules violate Constitutional rights. (**Tr. July 11, 2003**, **Vol II,** p. 327, line 12—p. 329, line 21)

Th[e]Court will affirm the trial court's judgment unless there is no substantial evidence to support it, unless the decision is contrary to the weight of the evidence, or unless the trial court erroneously declares or applies the law. …. Murphy v. Carron, 536 S.W.2d 30, 32(Mo**.** banc 1976). The primary rule of statutory construction is to ascertain the intent of the lawmakers by construing words used in the statute in their plain and ordinary meaning. Where the language is clear and unambiguous, there is no room for construction. Hide Park Housing Partnership, et al. v. Director of Revenue, 850 S.W.2d 82 (Sup. Ct. 1993). (Citing Jones v. Director of Revenue, 832 S.W.2d 516, 517 (Mo. banc 1992)). It is presumed that the legislature intended that every word, clause, sentence, and provision of a statute have effect. Conversely, it will be presumed that the legislature did not insert idle verbiage or superfluous language in a statute. Id. (Citing, State ex rel. Union Elec. Co. v. Public Service Comm'n,765 S.W.2d 626, 628 (Mo. App. 1988)). Based upon the evidence presented, the Appellant's have shown that the Statutes and the powers granted by the Statutes were and continue to be unconstitutional and therefore

should have been ruled as such. The trial court's ruling is against the weight of the evidence as presented, orally and in writing, and therefore is a matter meriting review by this Honorable Court.

A final judgment is one that disposes of all parties and issues in the case and leaves nothing to future determination. Johnson v. Lester and Lesco Enterprises, 71 S.W.3d 240, (Mo. App. E.D. 2002). (Citing In re Marriage of Werths, 33 S.W.3d 541, 542 (Mo. banc 2000)). The court may enter a judgment as to one or more but fewer than all the claims or parties only upon an express determination that there is no just reason for delay. This is not the case. Appellants contend that the trial court's judgment is not a final judgment because it fails to dispose of all the issues. In order for an appeal to lie there must be a final judgment. Id. at 242. The trial court did not make a finding that there is no just reason for delay in entering judgment on fewer than all the issues. Appellants filed this appeal, even though the trial court had not ruled on all of the issues, for lack of any other readily available remedy. The Statutes that gave birth to the issues at hand, which remain in controversy, need to be addressed and adjudicated due to the ongoing irreparable harm that Appellants are being made to endure.

IV

The trial court erred in drawing the proper legal conclusions from the facts stipulated because the finding was against the weight of the evidence in that Respondents' members of the Board of the Commission demonstrated that they have a vested interest in the success of the Commission borne by Mo. Statutes §§67.1800 through 67.1822 and the Appellants had been and will continue to be directly and adversely affected by that vested interest.

1. U.S. Preamble to the United States Constitution
2. State ex rel. Dalton v. Holekamp Lumber Co., 331 S.W.2d 171, (Mo. App. 1960).
3. State ex rel. Hadley v. Standard Oil Co., 218 Mo. 1 (1909)
4. Schnapps Shop, Inc. v. H. W. Wright & Co., 377 F. Supp. 570, (D. Md. 1973).

The Preamble to the United States Constitution states, "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." The Constitution does not promote monopoly of an industry, nor condone conflicts of interest for the "betterment of society and the welfare of the people." The commission is comprised of members that were appointed by the Mayor of St. Louis, Francis Slay, that have a deeply vested interest in the Commission. David McNutt owns Gateway Taxi Management Company, which is Laclede Cab Company, Gateway Taxi Service with approximately 120 taxicabs, Gustavo

Industries, and Industrial Communications. Mr. McNutt states that Gateway Taxi Management and Laclede Cab Company own no cabs, but Laclede Cab Company is one of the largest taxicab companies in the Metropolitan Area. He went further to say that Gateway Taxi Management owned the cabs and Gateway Taxi Service. Industrial Communications supplies leased equipment, i.e. radios and dispatch equipment. He admitted in his deposition testimony that Industrial Communications directly touched the Taxicab Industry in that they own the radio equipment that each cab must have, maintain, and have inspected from time to time. It is obvious as to why Mr. McNutt would want to be appointed to the Commission. Mr. McNutt went so far as to contact a Missouri State Representative, Joan Berry and Geoff Ranford from the Mayor's office to voice his desire to be appointed to the Commission. He was successfully appointed to the taxi commission in late 2002. However, when he spoke with Mayor Francis Slay regarding his appointment to the Commission, the topic of Mr. McNutt's business interests was never brought up. (L.F. Vol. II, Tab 10, Deposition of David McNutt, p. 6, line 3—p. 15, line 2).

Solomon Tadesse was also appointed to the Commission. He admitted to ownership of Gateway Express, L.L.C., which is Airport Taxicab. Mr. Tadesse alleges that "drivers" are the actual owner of Gateway Express, L.L.C. (L.F. Vol. II, Tab 9, Deposition of Solomon Tadesse, p. 6, line 3—p. 9, line 19). Mr. Tadesse stated that he would be acquiring Gateway Affordable Motors, which is a car dealership. Mr. Tadesse than stated that he had been owner of Gateway Affordable Motors for a year prior to his deposition. He further states that the late Buzz Westfall appointed him to the

Commission because he was affiliated with Gateway Express, L.L.C. and that he represented 61 drivers.

Louis Hamilton is also a member of the Board, who testifies that he was appointed in late fall 2002. Under oath, Mr. Hamilton stated that he had been a consultant with Hamilton & Company for the past 20 years. (L.F. Vol. II, Tab 8, Deposition of Solomon Tadesse, p. 6, line 2—p. 9, line 19). It has been determined that Louis Hamilton is also the Registered Business Agent for Vigilant Communications which was started on April 11, 2003, which was one month prior to the taking of Mr. Hamilton's Deposition. Vigilant Communications is a consulting firm dealing with politics and lobbying. It was asked in Mr. Hamilton's deposition have you lobbied in favor of this taxicab commission, and he answered that he had not. In light of the discovery of Vigilant Communication, it is questionable as to Mr. Hamilton's knowledge of lobbying done on behalf of the Metropolitan Taxicab Commission.

Thus far it has been shown that one member of the Commission sells cars, which could be potential cabs; one member owns a company that provides the taximeters and communication equipment for the taxicabs; and a Code that says a car cannot be placed in service as a taxicab that is older than 6 years old. It would be greatly beneficial to both of these members to let sleeping dogs lie, and continue with the Rules and Regulations as outlined in the Code. It is profitable and workable only for the larger taxicab companies, while the smaller independents are put out of business because they cannot financially afford to adhere to the new rules and regulations placed upon them.

This is a scenario where the fox is watching the hen house. The Preamble

invites the establishment of justice and insures domestic tranquility, whereby the people establish the government through election, not appointment. To promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, does not mean to be literally taken for the prosperity of a select few, but for the "People" as a whole. As stated in REV. MO. STAT. § 416.031, restraint of trade is prohibited:

1. Every contract, combination or conspiracy in restraint of trade or commerce in this state is unlawful. MO. REV. STAT. 67.1808 (7) grants the Commission the power to enter into contracts, sue and be sued. This subsection of the Statute is overly broad and grants powers to the Commission that are beneficial for those that sit on its board. Laclede Cab Company, owned by Mr. McNutt, who sits on the Commission stated that Laclede Cab Company has contracts in place with the President Casino. If a patron wanted another cab company to transport them, they would have to place the call themselves because Laclede has an exclusive contract. The consumer is now placed in a position of forced usage of Laclede Cab Company, and the independent cab driver/owners suffer a loss of earnings or a prohibition of potential future business earnings. (L.F. Vol. II, Tab 10, Deposition of David McNutt, p. 41, line 8—p.43, line 19

2. It is unlawful to monopolize, attempt to monopolize, or conspire to monopolize trade or commerce in this state. As previously stated, Mr. McNutt runs Industrial Communications, which directly touches the Taxicab Industry in that it owns the radio equipment that each cab must have, maintain, and have inspected from time to time. Mr. Tadesse is a seller of cars, which can be used as taxicabs. These are open vested interests held by these two individuals, and gives the appearance of monopolizing the industry and

drivers into forced trade due to the position they hold on the Commission and the power to regulate rules and regulations of the taxicab industry.

3. It is unlawful for any person engaged in trade or commerce in this state, in the course of such trade or commerce, to lease or make a sale or contract for sale of any commodity, whether patented or unpatented, for use, consumption, or resale within this state, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in this state. The individuals that sit on the Commission should not be linked in any way to the trade or sale of goods necessary for the trade as it gives the distinct impression of attempts to monopolize that part of the business. The Commission has the power to amend the taxicab Code in any way, at any time that it sees fit, to serve its own purpose. This gives foundation to a dictatorship and monopoly and as a whole is unconstitutional and violates the 1st, 5th, 8th, 13th, and 14th Amendments. There would be no vote taken on any issue amended and the Commission will conduct business for itself regulating the lives of the Appellants, as well as the consumer, as is beneficial to the Commission. The independent taxicab company and owners are at the mercy of the Commission. This unconstitutional restriction interferes with the free flow of commerce. Individual businesses are not prevented from growth, but the rules of the Code as set

forth will prohibit the independent taxicab drivers and smaller taxicab companies from expanding in the taxicab industry unless the expansion is approved by the Commission.

The Constitution of the United States, as stated in the Preamble promotes the general welfare, secures the blessings of Liberty to ourselves and our Posterity. The meaning of "Welfare" in the context that the founding fathers had written in the Preamble meant health, happiness, or prosperity and well-being. Welfare in today's context also means organized efforts on the part of public or private organizations to benefit the poor, or simply public assistance. The 14th Amendment guarantees all persons born or naturalized in the United States, and subject to the jurisdiction thereof, that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The Regional Taxicab Commission disregards all that the 14th Amendment guarantees to the independent cab drivers and owners. Many will be forced out of the taxicab industry because of their inability to comply with the Codes that the Commission has instituted, which directly deprives that individual of life and liberty and their pursuit of happiness. The individuals that will prosper from the Rules and Regulations of the Commission are the very individuals who have been appointed to make them and the larger taxicab companies.

In State ex rel. Dalton v. Holekamp Lumber Co., 331 S.W.2d 171, (Mo. App. 1960), (citing State ex rel. Hadley v. Standard Oil Co., 218 Mo. 1 (1909)), "The statute contemplates the existence of at least two or more corporations, individuals or

partnerships, so as to agree or combine with each other to do the prohibited acts mentioned in the statute. In other words, it is intended to operate upon two or more corporations or individuals, who, so far as the public are concerned, indicate that they are pursuing an independent business, legitimate competitors, when, in fact, there is a secret agreement by which the very things condemned by the statute are accomplished…. Neither corporations, individuals, nor partnerships are permitted to deceive or mislead the public by an apparent competition, when, in fact, none exists." "[I]n order to vitiate a contract or combination it is not essential that its result should be complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition. Id. at 10. (citing United States v. E. C. Knight Co., 156 U.S. 1, 15 S. Ct. 249. (1895)) And that, the necessary effect of the agreement is the criterion 'no matter what the intent was on the part of those who signed it. The members of the combination would perhaps deny that they entered into the agreement with a view to lessen competition, and we will assume that they did not. But does it, in fact, lessen or tend to lessen competition? Competition is the struggle between rivals for the same trade at the same time. It is self-evident that there cannot be competition unless there is trade…. Hadley (citing United States v. Freight Assn., 17 S. Ct. 540 (1987)). . . . In Schnapps Shop, Inc. v. H. W. Wright & Co., 377 F. Supp. 570, (D. Md. 1973), quoting Mr. Justice McKenna, in National Cotton Oil Co. v. Texas, 197 U.S. 115, (1905) at 581, said, "Its dominant thought now is …the suppression of competition by the unification of interest or management, or it may be through agreement and concert of action. And the purpose is so definitely the control of prices that monopoly has been defined to be

'unified tactics….' It is the power to control prices, which makes the inducement of combinations and their profit. It is such power that makes it the concern of the law to prohibit or limit them."

It is the consensus of the authorities that a monopoly within the meaning of the anti-trust laws is created when as a result of any contract or combination previously competing businesses are so concentrated into the hands of a single individual or corporation or of a few individuals or incorporations acting in concert, that they thereby have the power to practically control the prices of commodities, and thus practically suppress competition. *Supra*. When you put a special interest group in charge of government function such as the Members of the Commission with the decision making power they were granted, the function of which benefits that special interest group, it then becomes a government for the special interest group. It is a conflict of interest to have individual's with the most to gain to be sitting on a Board with such authority. In contrast, it would be like letting General Motors regulate the laws on safety of vehicles, when they are the sellers of the vehicles that are the subject of the safety of vehicles. Of course, all decisions would be to benefit General Motors because they make and sell the vehicles. Such is the case and scenario surrounding the individuals that comprise the Taxicab Commission.

CONCLUSION

Th[e]Court will affirm the trial court's judgment unless there is no substantial evidence to support it, unless the decision is contrary to the weight of the evidence, or unless the trial court erroneously declares or applies the law. Constitutional interpretation is an issue of law…. Murphy v. Carron, 536 S.W.2d 30, 32(Mo. banc 1976). The passing of these Bills is a violation of the Plaintiffs' 1st, 5th, 6th, 8th, and 14th Amendment rights granted to each, individually, by the U.S. Constitution, Missouri's comparable Constitutional provisions. Appellants have no adequate remedy at law or otherwise for the harm or damage being done by the passing, instituting, and enforcement of the amendments. A party has standing to bring a claim before a court if the party has suffered 'actual or threatened injury as a result of the putatively illegal conduct of the defendant.' Ashcroft v. Free Speech Coalition, 198 F.3d 1083, (9th Cir. 1998). Appellants will continue to suffer irreparable harm, damage, and injury unless the acts and conduct of Respondents complained of are enjoined because of the restrictions and financial hardship that is being placed upon Appellant's livelihood. The trial court did not address all the issues at stake here. Therefore, based on the foregoing, Appellants request this Honorable Court to render the Statutes, which are subject to this Appeal, as unconstitutional, or in the alternative remand this case back to the trial court for its complete ruling on all issues of the Statutes, and the irreparable harm that Appellants are being made to endure.

> [T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints,... and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment."

Moore v. City of East Cleveland, Ohio, 431 U.S. 494(1977). (Citing *Poe* v. Ullman, 367 U.S. 497, (1961))(dissenting opinion).

Respectfully submitted,

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CERTIFICATE OF CONTENTS OF BRIEF

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

Pursuant to Rule 55.03:

1. The representations and contentions in this brief are not presented for any improper purpose;

2. The claims and contentions in this brief are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

3. The assertions of fact in this brief have evidentiary support;

4. Any denial of a factual matter in this brief is warranted by the evidence.

This brief complies with the limitations contained in Mo. R. Civ. P. 84.06(b). The brief contains 8,963 words.

The diskette filed with brief contains one file entitle Appellant's Brief. Doc. The format used is Microsoft Word. This diskette has been scanned and found to be free of any detectable virus.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was hand delivered, this 13th day of February, 2004, to Maureen Beekley, Assistant Attorney General, 720 Olive Street, Suite 2150, St. Louis, MO 63101-2398; Cynthia L. Hoemann, Associate County Counselor, 41 South Central Ave., Clayton, Mo 63105; and Edward J. Hanlon, Deputy City Counselor, City of St. Louis, 314 City Hall, St. Louis, MO 63102.

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